

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200712017**

Release Date: 3/23/2007

Index Number: 7701.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

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Refer Reply To:  
CC:PSI:B02  
PLR-132759-06

Date:  
November 28, 2006

Legend

X =

Country =

D1 =

D2 =

D3 =

Dear :

This is in response to a letter dated July 5, 2006, submitted on behalf of X by its authorized representative, requesting a determination that X has sufficiently satisfied the requirements under § 301.7701-3 of the Procedure and Administration Regulations to file an election to be classified as a disregarded entity for federal income tax purposes based on the doctrine of substantial compliance.

FACTS

The information submitted states that X was formed as a Country per se corporation on D1. X converted from a per se corporation to a Country eligible entity effective D3. X intended to be classified as a disregarded entity for federal tax purposes effective D3. However, X inadvertently filed an erroneous Form 8832, Entity Classification Election. The election provided an invalid effective date of D2, at which time X was still a per se

corporation and ineligible to make an election to be classified as a disregarded entity for federal income tax purposes.

### LAW AND ANALYSIS

Section 301.7701-2(a) generally provides that a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.

Section 301.7701-3(a) provides that an eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(a) further provides that so long as a business entity is not classified as a corporation under § 301.7701-2(b)(1), or (3)-(8) (an eligible entity), it may elect its classification for federal tax purposes.

Section 301.7701-3(b)(2)(i)(B) provides that unless the entity elects otherwise, a foreign eligible entity is an association if all members have limited liability except as provided in § 301.7701-3(b)(3).

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing a Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

In the present case, with regard to the effective date of the election, X did not literally comply with the instructions to Form 8832 or the requirements in the regulations for making an election to be classified as a disregarded entity for federal tax purposes. However, literal compliance with the procedural instructions to make an election is not always required. Elections may be treated as effective where the taxpayer complied with the essential requirements of a regulation (or of the instructions to the applicable form) even though the taxpayer failed to comply with certain procedural directions therein. See Hewlett-Packard Company v. Commissioner, 67 T.C. 736, 748 (1977), acq. in result, 1979-1 C.B. 1.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X substantially complied with the requirements for an election to be treated as a

disregarded entity for federal tax purposes under § 301.7701-3, and that the election will be treated as satisfying the requirements of § 301.7701-3 as of D3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter will be sent to X's first and second authorized representatives.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes